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Federal Communications Commission
Washington, D.C. 20554

DISPATCHED

MM Docket No. 96-66

In the Matter of

Amendment of Section 73.202(b), RM-8729
Table of Allotments,
FM Broadcast Stations.
(Sibley, Iowa and
Brandon, South Dakota)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 11, 1996; Released: March 29, 1996

Comment Date: May 21, 1996

Reply Comment Date: June 5, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by 21st Century Radio Ventures, Inc. ("petitioner"), permittee of Station KAJQ(FM), Channel 262A, Sibley, Iowa, proposing the substitution of Channel 261C3 for Channel 262A, the reallocation of Channel 261C3 from Sibley, Iowa, to Brandon, South Dakota, and the modification of petitioner's construction permit to specify Brandon as Station KAJQ(FM)'s community of license. Petitioner also suggests the allotment of Channel 282A at Sibley, Iowa. Petitioner states it will apply for Channel 261C3 at Brandon, if allotted.

2. Petitioner seeks modification of Station KAJQ(FM)'s authorization pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ Petitioner contends that adoption of its proposal will result in a preferential arrangement of allotments since Brandon will receive its first local aural transmission service. In support of its proposal, petitioner states that Brandon is incorporated community and is governed by elected officials. Petitioner notes that Brandon has its own police department, separate tax base, school system and a twenty-six member volunteer fire department.

3. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. Our initial analysis indicates that while petitioner's proposal would provide a

first local aural transmission service to Brandon, it also would deprive Sibley of its sole local service, since Station KAJQ(FM) is the only station licensed to serve the community. Although, petitioner suggests that Channel 282A is an equivalent substitute for Channel 262A at Sibley, it failed to express an interest in applying for the channel, if allotted. In order for the Commission to propose a change to the FM Table of Allotments, the proponent of an allotment proposal must cite a clear intention to apply for the channel and indicate a willingness to construct a station. Absent such an expression of interest, the Commission will not propose the allotment of a channel. Since we will not propose the allotment of Channel 282A to Sibley, we find that petitioner's proposal represents a request to remove the sole local commercial FM service from Sibley.

4. Although the *Community of License MO&O* restricts the removal of a community's sole local broadcast service, that document also states that a waiver of the prohibition will be considered "in the rare circumstances where removal of a local service might serve the public interest." *Id.*, 5 FCC Rcd 7096. However, we do not believe that the public interest is served by removing a community's sole local transmission service merely to provide a first local transmission to another community. The reallocation proposal must serve the Commission's allotment priorities and policies.² In this case, petitioner maintains that the reallocation of the channel from Sibley (population 2,815) to Brandon (population 3,543)³ will permit the number of persons served to increase from 23,527 people to 141,891 people with a "net increase" in 1 mV/m (60 dBu) coverage of 128,364 people. Petitioner argues that the theoretical loss of 23,527 people, the loss is noted as theoretical since the station is unbuilt, is justified because of the fact that the loss occurs in areas already well served by radio. However, our engineering analysis indicates that the proposed gain in number of persons to be served is attributable to the fact that the petitioner is proposing to move its station closer to the Sioux Falls, South Dakota Urbanized Area. In this regard, the Commission recently ruled that if a station seeks to move from rural communities to suburban communities located outside but proximate to Urbanized Areas, the proponent will be required to make the same showing that is currently required of stations seeking to move into Urbanized Areas if they would place a city-grade (70dBu) signal over 50% or more of the Urbanized Area. See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). In this case, if Channel 261C3 is allotted to Brandon, Station KAJQ(FM) will provide a 70 dBu signal to 90% of the Sioux Falls, South Urbanized Area. Based on our engineering findings, we request that petitioner submit information sufficient to show that Brandon is deserving of a first local service preference using the Commission's three factors enumerated in *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck*, 3 FCC Rcd 5374, (1988).

5. Channel 261C3 can be allotted to Brandon in compliance with the Commission's minimum distance separation requirements with a site of 5.4 kilometers (3.4 miles) east to accommodate petitioner's desired site.⁴ In accordance

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990).

² The FM allotment priorities are: (1) first full-time aural

service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight given to priorities (2) and (3)].

³ Population figures were taken from the 1990 U.S. Census.

⁴ The coordinates for Channel 261C3 at Brandon are North

with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 261C3 at Brandon or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

		Channel No.
City	Present	Proposed
Sibley, Iowa	262A	
Brandon, South Dakota	--	261C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **May 21, 1996**, and reply comments on or before **June 5, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James L. Primm, President
21st Century Radio Ventures, Inc.
530 Wilshire Boulevard
Suite 301
Santa Monica, California 90401
(Petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a

request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.